

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FREDERICK BANKS	)	
	)	
Plaintiff,	)	Civil Action No. 2:15-cv-1385
	)	
v.	)	Magistrate Judge Lisa Pupo Lenihan
	)	
JUDGE MARK HORNAK, <i>et al.</i> ,	)	
	)	ECF No. 1
Defendants.	)	
	)	
	)	
	)	

**REPORT & RECOMMENDATION**

**I. RECOMMENDATION**

It is respectfully recommended that the Motion for Leave to Proceed in Forma Pauperis filed by Frederick Banks (ECF No. 1) be denied for the reasons set forth below. It is also recommended that the Clerk of Court mark the case closed.

**II. REPORT**

Plaintiff, Frederick Banks, is a federal prisoner currently confined at the Allegheny County Jail in Pittsburgh, Pa., while awaiting trial on a new criminal offense charged in an indictment returned at No. 2:15-cr-168 in the Western District of Pennsylvania. He commenced this civil action on October 26, 2015 by filing a one page Motion for Leave to Proceed in Forma Pauperis pursuant to 28 U.S.C. § 1915(a). The document attached to the Motion is titled “Petition and Complaint for Writ of Mandamus.”

When submitting a Motion to Proceed In Forma Pauperis, the Petitioner/Plaintiff is required to submit “an affidavit that includes a statement of all assets such prisoner possesses

that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). In addition to the aforementioned affidavit, Petitioner/Plaintiff is further required to “submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.” 28 U.S.C. § 1915(a)(2). In this case, the Petitioner/Plaintiff failed to submit a copy of a trust fund account statement. Therefore,

### **III. CONCLUSION**

It is respectfully recommended that the Motion for Leave to Proceed in Forma Pauperis filed by Frederick Banks (ECF No. 1) be denied. It is also recommended that the Clerk of Court mark the case closed. Petitioner/Plaintiff may submit another motion to proceed in forma pauperis, along with a certified copy of the inmate account statement for the six (6) months preceding the filing of the complaint. If that resubmitted motion is granted, the case will be reopened. He may also attempt to refile this Petition/Complaint by paying the \$400 filing fee. Mr. Banks, is cautioned, however, that he may be subject to the three strikes rule, with which he is familiar, and also the Order entered by Judge Nora Barry Fischer dated November 6, 2013 (ECF No. 10) in Case No. 2:13-cv-1198.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and rule 72.D.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of service of a copy of this Report and Recommendation to file objections. Any party opposing the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to file timely objections will constitute a waiver of any appellate rights.

Dated: Nov. 10, 2015

/s/Lisa Pupo Lenihan

Lisa Pupo Lenihan  
United States Magistrate Judge

cc: **FREDERICK BANKS**  
#120759, 2F  
Allegheny County Jail  
950 Second Avenue  
Pittsburgh, PA 15219-3100